

**3573. Adulteration and misbranding of so-called vanilla extract. U. S. v. David Lowenthal. Tried to the court and a jury. Verdict of guilty. Fine, \$300. (F. & D. No. 5605. I. S. Nos. 250-e, 1664-e, 3182-e.)**

On June 24, 1914, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district three informations against David Lowenthal, New Rochelle, N. Y., alleging shipment by said defendant, in violation of the Food and Drugs Act, on October 19, November 15, and November 26, 1912, from the State of New York into the State of New Jersey, of quantities of a product purporting to be vanilla extract which was adulterated and misbranded.

Analyses of samples of the product by the Bureau of Chemistry of this department showed the following results:

	Sample 1.	Sample 2.	Sample 3.
Coumarin (per cent).....	0.17	0.17	0.14
Vanillin.....	None.	None.	None.
Lead No.....	0.21	0.10	0.16
Alcohol (per cent, by volume).....	2.74	2.97	2.87
Methyl alcohol.....	None.	None.	None.
Resins.....	None.	None.	None.
Color.....	Caramel.	Caramel.	Caramel.

Adulteration of the product was alleged in the informations for the reason that a substance, to wit, an aqueous solution<sup>1</sup> of coumarin, artificially colored with caramel, had been mixed and packed with said article so as to reduce and lower and injuriously affect its quality and strength; further, in that a substance, to wit, an aqueous solution<sup>1</sup> of coumarin, artificially colored with caramel, had been substituted wholly or in part for vanilla extract which the article purported to be; and further, for the reason that the article was colored with caramel in a manner whereby its inferiority was concealed. Misbranding was alleged for the reason that the article was an imitation of vanilla extract and offered for sale under the name of vanilla extract, whereas, in truth and in fact, it was not vanilla extract, but was an aqueous solution<sup>1</sup> of coumarin, artificially colored with caramel.

On June 29, 1914, the defendant entered a plea of not guilty to the informations and on October 29, 1914, the case having come on for trial before the court and a jury, after the submission of evidence and arguments by counsel, the following charge was delivered to the jury by the court (Van Fleet, J.):

Gentlemen of the jury: Give me your attention for a few moments.

There are three informations against this defendant on trial, which have been consolidated, for your determination, and they are based upon the provisions of the so-called Food and Drugs Act of June 30, 1906. That act makes it a misdemeanor for one to ship in interstate commerce, that is, transport from one State to another, any article of food or drugs which is adulterated or misbranded. An article under that act is adulterated if any substance is substituted wholly or in part for the genuine article in its make-up. It is misbranded if it be labeled or branded so as to deceive or mislead the purchaser as to its real character.

Now, the informations are couched in four separate counts and one charges, in three several counts, the defendant with shipping from the city of New Rochelle in the State of New York to the city of Union Hill in the State of New Jersey, to one Joseph Deschner, an article designed and intended to be used as an article of food which was invoiced by the defendant as vanilla and it charges it was not in fact vanilla, but it was an adulteration of an aqueous solution of coumarin artificially colored with caramel. The second count is substantially the same, charging that the aqueous solution was artificially colored with caramel. The third count, substantially the same, charging that it was adulterated and colored with caramel. The fourth count charges that the

<sup>1</sup> While it was alleged in the information that "an aqueous solution of coumarin \* \* \* had been mixed," etc., as a matter of fact alcohol was present in every case.